

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Definition of Radio Markets

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MM Docket No. 00-244

TO: The Commission

COMMENTS

Rick L. Murphy¹, by its attorneys, hereby submits his comments in response to the Commission's *Notice of Proposed Rule Making*, FCC 00-427, MM Docket No. 00-244, released December 13, 2000 ("NPRM").² Mr. Murphy advocates a modification of the Commission's definition of a radio market for radio ownership purposes to account for *all* radio services available in a particular market, including all satellite digital audio radio service channels ("SDARS Channels"). In support whereof, the following is respectfully submitted for the Commission's consideration:

1. Once launched, SDARS Channels will compete with existing terrestrial radio stations for listeners and advertising revenue, as the Commission has duly acknowledged. *See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, 12 FCC Rcd 5754 (1997). The current licensees of SDARS, XM Satellite Radio and Sirius Satellite Radio, each plan to

¹ Mr. Murphy is the licensee of a group of radio stations in the Lake Havasu City, Arizona area.

² The NPRM established February 12, 2001 as the deadline for filing comments. This deadline was extended to February 26, 2001 by the Commission. *Order Extending Time*, DA 01-71, MM Docket No. 00-244, released January 10, 2001. Therefore, the instant comments are timely filed.

provide radio programming on 200 channels (100 channels each). *See* XM Satellite Radio's website at: <http://www.xm-radio.com/js/whatisxm/whatisxm.asp>; Sirius Satellite Radio's website at: http://www.cdradio.com/nonflash_site/default.htm). This means that in any given radio market, existing local terrestrial radio stations will have increased competition from 200 SDARS Channels.

2. Pursuant to Section 202(b)(1) of the Telecommunications Act of 1996 and under the Commission's current radio ownership rules (47 C.F.R. 73.3555), no one entity may own 100 radio stations. While the Commission did not seek further comments concerning satellite DARS in its NPRM, there is an obvious inconsistency between the terrestrial radio ownership limits and the non-existent limits on the number of SDARS Channels available in a particular radio market. While current licensees of SDARS are not restricted by any limits on the number of SDARS Channels that they may provide, licensees of terrestrial radio stations are limited to the ownership of eight commercial stations in a radio market with 45 or more commercial stations. Fairness dictates that the Commission resolve this inconsistency.

3. Further compounding the inconsistency, there are no restrictions on the ownership of SDARS channels by terrestrial broadcasters. For instance, Clear Channel Communications, Inc. is named as a strategic investor in XM Satellite Radio (*See* XM Satellite Radio's website at: <http://www.xmsr.com/js/corpinfo/ownership.asp>). Clear Channel Communications, Inc. is an attributable owner of approximately 1,170 radio stations nationwide, including combinations of multiple stations in 47 of the top 50 markets (*See* Clear Channel Communications, Inc.'s website at: <http://www.clearchannel.com/radio/index.html>). Once SDARS Channels go on the air, stations in

markets competing with Clear Channel Communications, Inc. stations will find themselves not just competing with Clear Channel Communications, Inc. as an entity in the market owning up to eight stations, but rather with Clear Channel Communications, Inc. as an entity with between 100 and 108 radio stations due to its attributable ownership in both terrestrial and SDARS Channels stations.

4. If terrestrial radio stations are to be given a fighting chance to compete with SDARS Channels, the Commission must do all it can to place owners of terrestrial radio stations on as much of an equal footing as possible with owners of SDARS Channels. Given that the Commission is restricted by the statutory ownership limits set forth in Section 202(b)(1) of the Telecommunications Act of 1996, the Commission must count all SDARS Channels available in a particular radio market as stations within the market for purposes of determining how many radio stations are in that market. Although this may not completely resolve the inconsistency between the ownership limits on terrestrial radio stations and the non-existent limits on SDARS Channels, it will at least permit more radio markets to be classified as a radio market with 45 or more commercial radio stations, thereby allowing one entity to own or operate up to eight commercial radio stations in that market. 47 U.S.C. 202(b)(1)(A); 47 C.F.R. 73.3555(a)(1)(i). Increasing the number of terrestrial radio stations that an entity may own will permit that entity to benefit from the economies of scale by, for example, consolidating staff and using common studios. This in turn will permit that entity to apply the saved resources towards improving and/or adding more local programming to compete against the imminent institution of dual 100 channel service from SDARS channels.

WHEREFORE, for the foregoing reasons, the Commission should count all satellite digital audio service channels available in a particular radio market as stations within the market for purposes of determining how many radio stations are in that market.

Respectfully Submitted,

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